

SCHEDULE 1

Modifications to these Regulations in their application to former officers

Modification: insertion of Part 1A

2. These Regulations apply as if after regulation 4, there were inserted—

“PART 1A

Condition C special determination

Condition C special determination: matters to be taken into account

4A.—(1) This Part applies where the Director General is required under paragraph 23(5A)(ba)(1) of Schedule 3 to the 2002 Act (as applied with modifications by regulation 42 of, and Schedule 2 to, the Complaints and Misconduct Regulations) to make a Condition C special determination.

(2) A Condition C special determination is a determination by the Director General as to whether the taking of disciplinary proceedings against a Condition C person in respect of alleged gross misconduct would be reasonable and proportionate having regard to—

- (a) the seriousness of the alleged gross misconduct;
- (b) the impact of the allegation on public confidence in the police, and
- (c) the public interest.

(3) When assessing the seriousness of the alleged gross misconduct for the purposes of paragraph (2)(a), the matters which the Director General must take into account are—

- (a) whether it appears that the alleged gross misconduct amounts to a criminal offence;
- (b) whether it appears that a complainant or other person has been harmed (whether physically or psychologically) by the alleged gross misconduct and, if so, the extent and seriousness of the harm;
- (c) where it appears that a complainant or other person has been so harmed, whether that person was a vulnerable person;
- (d) whether it appears that the alleged gross misconduct was intentional;
- (e) whether it appears that the purpose or one of the purposes of the alleged gross misconduct was personal gain or benefit for the officer concerned;
- (f) whether it appears that the alleged gross misconduct is aggravated by discriminatory behaviour on the grounds of a person’s race, gender, disability, age, religion or belief, sexual orientation or gender identity;
- (g) whether it appears that the officer concerned acted with one or more other persons serving with the police within the meaning of section 12(7)(a) or (c) of the 2002 Act (member of a police force or special constable under the direction and control of a chief officer);
- (h) the extent to which the alleged gross misconduct involved abuse of a position of trust or authority held by the officer concerned;

(1) Paragraph 23(5A) was inserted by section 16 of, and paragraphs 9 and 26(1) and (2) of Schedule 5 to, the Policing and Crime Act 2017.

Status: This is the original version (as it was originally made).

- (i) whether it appears that the officer concerned has taken steps to prevent the alleged gross misconduct being identified or to obstruct investigations into it, other than lawful steps in the officer's defence;
 - (j) whether it appears that the alleged gross misconduct has had an adverse effect on community relations;
 - (k) whether it appears that there are mitigating circumstances arising out of the health (whether physical or mental) of the officer concerned at the time of the alleged gross misconduct, and
 - (l) any other matters that the Director General considers relevant.
- (4) When assessing the impact of the allegation on public confidence in the police for the purposes of paragraph (2)(b), the matters which the Director General must take into account are—
- (a) whether it appears that the alleged gross misconduct has had an effect on relations between the public and the police, including relations between the members of the community where the alleged gross misconduct occurred and the police force concerned;
 - (b) the extent of any apparent harm to public confidence in the police, and, in particular, in the police force concerned;
 - (c) the effect that a decision not to take disciplinary proceedings might have on public confidence in the police, and
 - (d) any other matters that the Director General considers relevant.
- (5) When assessing the public interest for the purposes of paragraph (2)(c), the matters which the Director General must take into account are—
- (a) whether it appears that the officer concerned should be prevented from future employment or appointment by a person mentioned in section 88C(5) of the 1996 Act (effect of inclusion in police barred list: persons who may not employ or otherwise appoint a barred person)(2);
 - (b) where it appears that the officer concerned should be so prevented, whether disciplinary proceedings are necessary for this purpose;
 - (c) the length of time since the alleged gross misconduct occurred;
 - (d) whether it appears that the officer concerned will be held to account in respect of the alleged gross misconduct through other means, such as criminal or other proceedings;
 - (e) where it appears that a complainant or other person has been harmed (whether physically or psychologically) by the alleged gross misconduct, whether it appears that a decision not to take disciplinary proceedings would adversely affect that person;
 - (f) whether it appears that the officer concerned is unfit to be subject to or to participate in disciplinary proceedings by reason of disability or ill-health, and
 - (g) any other matters that the Director General considers relevant.
- (6) In paragraph (3)(c), "vulnerable person" means a person who, by reason of age, disability or ill-health, is, or may be, unable to—
- (a) take care of themselves, or
 - (b) protect themselves against harm or exploitation.

(2) Section 88C was inserted by Schedule 8 to the Policing and Crime Act 2017 and subsection (5) of that section was amended by paragraph 65(1) and (3)(b) of Schedule 9 to that Act. There was another amendment of that section but it is not relevant.

Condition C special determination: procedure

4B.—(1) Before making a Condition C special determination the Director General must give a notification in writing to—

- (a) any complainant;
- (b) any interested person, and
- (c) the officer concerned.

(2) A notification under paragraph (1) must—

- (a) state that the Director General is to make a Condition C special determination and the consequences under Schedule 3 to the 2002 Act of such a determination;
- (b) explain the effect of regulation 4A;
- (c) explain that—
 - (i) if disciplinary proceedings are taken and the allegation of gross misconduct is proved, the officer concerned may be subject to a finding that the officer would have been dismissed if the officer had not ceased to be a member of a police force or a special constable, and
 - (ii) if the officer concerned is subject to such a finding, the officer will be included in the police barred list;
- (d) subject to the harm test, set out any findings relating to the conduct to which the investigation relates in any investigation report submitted to the Director General under Schedule 3 to the 2002 Act;
- (e) set out the person's rights under paragraph (3);
- (f) in the case of the officer concerned, state that the officer has the right to seek advice from the officer's staff association or any other body and the effect of regulation 7(1) and (2).

(3) A person given a notification under paragraph (1) may, within the period of 21 days beginning with the day on which the notice is given or such longer period as the Director General may agree with that person, provide a written statement and any document which the person wishes the Director General to take into account for the purposes of the Condition C special determination.

(4) Before making a Condition C special determination the Director General may consult any other person the Director General thinks fit.

(5) When making a Condition C special determination the Director General must take into account in addition to the matters specified in regulation 4A—

- (a) any written statement or document provided under paragraph (3);
- (b) any response to a consultation carried out under paragraph (4);
- (c) any findings relating to the conduct to which the investigation relates in any investigation report submitted to the Director General under Schedule 3 to the 2002 Act, and
- (d) any other relevant evidence.

(6) The Director General must give notification in writing of a Condition C special determination and the consequences under Schedule 3 to the 2002 Act of the determination to the persons mentioned in paragraph (1).”.